IN THE NORTH DAKOTA SUPREME COURT

Nadia Nikolayevna Krasheninnik, Plaintiff and Appellant,	Supreme Court #20170304
vs.	Cass County #2017-DM-00467
Ahmed Moustafa Dokmak, Defendant and Appellee.	

APPEAL FROM THE DISTRICT COURT,

CASS COUNTY, NORTH DAKOTA

EAST CENTRAL JUDICIAL DISTRICT

THE HONORABLE STEVEN MARQUART, PRESIDING

APPELLANT'S BRIEF

Gjesdahl Law, PC
Michael L. Gjesdahl
ND Attorney ID #04658
Insight Professional Offices
1375 21st Avenue N.
Fargo, ND 58102
701-237-3009
Mike@Gjesdahllaw.com
Attorney for Appellant

Table of Contents

Table of Authorities

North Dakota Cases

North Dakota Statutes

Other Authorities

I.

Jurisdictional Grounds

[1] "Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law." North Dakota Constitution, Article VI, Section 6. "A judgment or order in a civil action...may be removed to the Supreme Court by appeal as provided in this chapter." N.D.C.C. § 28-27-01. Paternity judgments and child support orders are appealable. N.D.C.C. § 28-27-02.

II.

Statement of Issues

[2] This appeal presents these issues:

Central Issue:

Did the District Court err by calculating Ahmed's child support obligation from the month after the proceeding commenced rather than from the month of the child's birth?

Subsidiary Issues:

Did the District Court use the wrong analysis to calculate a child support arrearage for an acknowledged father? Was its analysis incompatible with N.D.C.C., Sections 14-08.1-01 and 14-20-15(1) and this state's child support policy?

When the parties sign and file an Acknowledgment of Paternity at a child's birth, does the District Court have discretion to begin the support obligation in any month other than the month of the child's birth?

Is there any word or deed, or combination thereof, by which a custodial parent can *waive* her child's right to receive child support and/or alter this state's public policy?

Did the District Court err by admitting into evidence documents and testimony offered solely to establish the proposition that Nadia had waived Ahmed's legal obligation to pay child support for his son?

III.

Statement of Case

[3] Nadia Nikolayevna Krasheninnik ("Nadia") and Ahmed Moustafa Dokmak ("Ahmed") are parents of a son, AAD, born in late, 2012. At his birth, they signed an Acknowledgment of Paternity which was recorded by North Dakota's Division of Vital Statistics. AAD has always lived with Nadia and, other than to help with a small dental bill, Ahmed never paid child support.

[4] Nadia commenced an action against Ahmed on September 12, 2016 to establish the parties' parenting rights and duties, including a prospective child support obligation and an arrearage to the date of AAD's birth [App. 11].

[5] There were no support orders in place prior to those entered in this action.

[6] Before trial, the parties stipulated to residential responsibility and parenting time terms, and to Ahmed's *prospective* child support obligation, including a presumptively correct guideline calculation and a start-date [App. 30]. Partial Judgment was entered on April 17, 2016 [App. 45].

[7] Upon entry of that Partial Judgment—which reserved the issue of Ahmed's back support—the Clerk of District Court deemed it necessary to open a companion, or continuation, file.

[8] Ahmed failed to pay his first nickel of support until Partial Judgment was entered.

[9] Trial was confined to calculating Ahmed's past support amount, if any. Nadia urged the court to calculate his arrearage from the date of AAD's birth. Ahmed alternatively contended there should be no back support at all or, if any,

that it should commence no earlier than when Nadia served the original action (in September 2016).

[10] At trial, the parties' stipulated to the presumptively correct guideline calculations for each year, from 2012 through 2016, and prospectively. In identifying Ahmed's prospective monthly support, they'd previously stipulated to five years' worth of calculations to identify his averaged gross annual income [App. 30-33]. Ahmed agreed to the admissibility of Nadia's six exhibits, summarizing her calculations of Ahmed's presumptively correct guideline support for each year [T. 6; App. 76-81]. He offered no evidence of his own of the presumptively correct guideline support calculations.

[11] The District Court concluded that, *"fairness and public policy, as well as AAD's interests would best be served if Ahmed's child support obligation began 30 days after that action was filed. In other words, in October of 2016"* (App. 102).

[12] The Partial Judgment was amended to conform to these instructions, and a "Final Judgment" was entered on July 14, 2017 [App. 104]. A docketable Money Judgment, which Nadia sought, was entered, too, identifying a $9,939 arrearage [App. 116].

[13] Nadia timely appealed both judgments.

IV.

Statement of Facts

[14] Nadia was born and raised in Russia, where she received Bachelor and Master degrees in biology and plant genetics [T. 2-4, 11-14]. She emigrated to the United States in 2000, obtained a doctorate at NDSU and, today, is a research scientist for Dupont Pioneer [T. 10, 11, 17-19]. She's a naturalized U.S. citizen [T. 11].

[15] In 2011 and 2012, Nadia was involved with Ahmed and became pregnant. During the pregnancy, Nadia recalls Ahmed telling her, *"I don't need any more children. I have enough..."* [T. 103]. Ahmed stopped contacting Nadia in her fifth month [T. 102].

[16] AAD was born in late 2012, via emergency Caesarian Section, and spent his first week of life in the NICU [T. 16].

[17] Nadia received a birth-related medical bill of approximately $16,000. Of that amount, 45% was not covered by insurance [T. 17]. In addition, both before and after AAD's birth, Nadia paid for the usual maternity and child-related expenses, including:

Maternity clothes
Compression socks
Crib
Changing station
Stroller
Car seat
Baby clothes
Bottles
Breast pump
Formula

[T. 16]

Diapers
Clothes
Toys
Blankets
Additional car seats and boosters
Daycare [was $800/mo., now $660/mo, [T. 22]]
Swimming lessons
Ice skating lessons
Sports sampler
Art classes
Music lessons
Kindermusik
Art stuff
Paints
Crayons
Painting books
AAD's uninsured medical care

[T. 18]

AAD's dental care
AAD's vision care

[T. 19]

AAD's health insurance coverage

[T. 11]

Home mortgage and utilities

[T. 20]

A bike

[T. 21]

Apartment rent

[T. 21]

[18] Ahmed is a medical doctor and psychiatrist, with his own practice in Edina, Minnesota [T. 15]. He lives in a nice home in Chanhassen, Minnesota, with two children (ages 7 and 9), and their mother [T. 43].

[19] Ahmed is not one of those unfortunate men, surprised to learn that a child of his was born some time ago [T. 83]. No. Nadia told him she was pregnant, and he never doubted he was AAD's father [T. 45]. Accordingly, he *"didn't hesitate for a minute"* to sign an Acknowledgment of Paternity [T. 45; App. 75].

[20] Yet, Ahmed saw AAD only three times in his first two months, quit visiting, and didn't see AAD again for over three years [T. 46, 81, 106, 111].

[21] Ahmed's gross income from 2012 through 2016 was:

2012	$210,407	[App. 76]
2013	$167,840	[App. 77]
2014	$140,123	[App. 78]
2015	$205,417	[App. 79]
2016	$177,795	[App. 80]

[22] Throughout AAD's life, Ahmed owned investment property, including a house in Cape Coral, Florida, and a townhome in Moorhead, Minnesota, both of which he leases out [T. 66].

[23] Despite knowing of AAD, and despite his financial resources, until a Partial Judgment was entered, Ahmed never paid Nadia a plug nickel of child support [T. 23, 56, 92]. Nothing.

[24] His only contribution—ever—was a $51 payment he made against one of AAD's dental bills [T. 20; App. 91]. He didn't help Nadia pay the hospital bill for AAD's birth [T. 17]. He never helped pay for AAD's vision or medical care [T. 20]. He never helped Nadia pay her rent or, later, her mortgage, or any utilities [T. 21]. He's never paid anything.

[25] These facts are not contested. None of them.

[26] In light of the central issue presented, the factual concessions Ahmed made during trial might come as a surprise. He conceded:

a. He has a legal obligation, a duty, to support AAD [T. 49, 130].

b. That obligation began at AAD's birth [T. 55].

c. He also had a moral obligation, since AAD's birth, to support him [T. 56].

d. Throughout AAD's life, he has had the financial ability and resources to pay support [T. 92] (In fact, the District Court commented, *"I don't think there's any suggestion that he can't afford to do this."* [T. 86]).

e. He is currently able to obtain a loan and pay an arrearage back to AAD's birth [T. 88].

[27] Not only did Ahmed concede these points, he testified—vigorously—that, throughout AAD's life, there was nothing he wanted more than to pay child support to Nadia (testimony starkly contradicted by his position in this case):

Q. You wanted nothing more than to give Nadia some of your money to support your child, correct?

A. Of course.

[T. 59]

Q. You wanted to pay Nadia money?

A. Yes.

Q But you just couldn't make it happen?

A. Yes.

Q. That's true?

A. Yes, it is true.

[T. 59]

[28] He could make it happen for his other two kids, though. In testimony elicited by his own counsel, Ahmed crowed that he'd financially provided for his other two kids in every possible way [T. 69]:

> ...I pay for the mortgage, the utilities. I buy my kids, you know, clothes, toys. I take them places. Been to Orlando. Pay for plane tickets and hotel and these kinds of things. This is how I provide for their support. I have been to their school. They have fees there for staying a bit after hours...these kinds of things.

[T. 95]

[29] Whose fault was it that Ahmed "couldn't make it happen" when it came to supporting AAD? Well, according to Ahmed, it was Nadia's, of course.

[30] *Why* couldn't he "make it happen"? Again, according to Ahmed, Nadia wouldn't let him [T. 49].

[31] Thus, Ahmed's case-in-chief was devoted to establishing these five propositions:

a. ***Slow to Sue:*** Nadia could have started this action much sooner, and she knew it. [T. 25, 27, 29].

b. ***The Check:*** Once, Ahmed actually put a check on Nadia's coffee table—his one and only tender of financial help—and she declined it [T. 49-52].

c. ***No Need:*** In two emails, Nadia told Ahmed she didn't need his money [T. 30, 38].

d. ***No Visiting:*** Ahmed stopped visiting AAD for three years *"because I wasn't invited anymore"* [T. 46-47]; in other words, his non-relationship with AAD was Nadia's fault, too.

e. ***No "Allowing":*** *"Nadia didn't allow me to pay her any money"* [T. 49, 57-59].

[32] Nadia objected to the relevance of any of these propositions [T. 8, 30, 32, 34, 38]. But, since the Court voiced clear interest in them, and to counter Ahmed's five propositions, she elicited this record:

a. ***Slow to Sue, Explained:*** Ahmed intimidated and scared Nadia [T. 72-73]. She'd encouraged Ahmed to *"establish...his parenting time and obligations through legal channels"* so *"I would not have to deal with Ahmed"* [T. 110]. She didn't want to start the action because, *"he said, if you go through legal channels, I would have to screw you..."* [T. 110-111]. Ahmed was equally aware that ***he*** could have started an action much sooner but, didn't, because he doesn't *"like having courts involved"* in his *"family business"* [T. 54, 70]. He, thus, admitted, *"I carry a responsibility as well"* [T. 81].

b. ***The Check, Explained:*** The "coffee table payment" involved Ahmed angrily throwing down a balled-up check when Nadia broached the issue of support [App. 90-91]. Ahmed's intent was to insult and shame her should she accept it, so she didn't even look at the check or its amount. She told him, *"I don't want to do it this way. I prefer to go to court and make sure AAD gets what he is supposed to get."* Nadia explained, *"that made Ahmed very angry...it was not a pleasant conversation...it was an intent to humiliate me"* [T. 36, 110, 115].

   Consistently, once this action began, Ahmed emailed Nadia to say, *"so the relationship was to get pregnant and having a child was to get money. What kind of person are you? It seems like I'm finally getting to see you for what you are. I hope you're proud of yourself."* [T. 90].

c. ***No Need, Explained:*** The message Nadia intended to convey by saying she didn't want Ahmed's money was that *"I believe child support should have been handled through the legal channels,"* not through Ahmed occasionally throwing checks at her and shaming her for taking them [T. 39].

d. ***No Visiting, Refuted:*** Ahmed was disinterested in Nadia's pregnancy [T. 103-104]. Nevertheless, she never prevented Ahmed from seeing, or having a relationship with, AAD and, in fact, encouraged and facilitated it [T. 80, 81, 110]. Nadia encouraged Ahmed to establish a parenting time schedule through the Court [T. 110].

e. ***No "Allowing," Explained:*** Nadia did not prevent Ahmed from paying support. She simply preferred it be handled formally, through the courts, rather than to contend with Ahmed, Ahmed's anger, and Ahmed's shaming cuts [T. 110].

[33] The District Court was disinterested in the parties' full relational context. It was only interested in the isolated fact that Nadia declined Ahmed's "coffee table payment" and told him she didn't want to receive his payments directly and informally:

> ...there was evidence that when Ahmed attempted to give Nadia a $3,000 check shortly after AAD's birth, she rejected that, as well as Ahmed's other gestures of giving assistance.

[App. 101-102].

[34] And, with that myopic, context-free, finding, the District Court rejected North Dakota's child support law and the public policy requiring parents to support their children, and denied Nadia's claim for support back to AAD's birth. Instead, the District Court: (1) essentially found that Nadia had "waived" AAD's right to child support; (2) applied an inapplicable "best interests" standard; and (3) without explanation, actually found it was in a child's best interests to ***not*** receive his acknowledged father's financial support for the first four-and-a-half years of his life.

V.

Argument

A.

Standard of Review

[35] "Child support determinations involve questions of law which are subject to the de novo standard of review, findings of fact which are subject to the clearly erroneous standard of review, and may, in some limited areas, be matters of discretion subject to the abuse of discretion standard of review." State ex rel. K.B. v. Bauer, 2009 ND 45, ¶ 8, 763 N.W.2d 462. "If the district court fails to comply

with the child support guidelines in determining an obligor's child support obligation, the court errs as a matter of law." Serr v. Serr, 2008 ND 56, ¶ 18, 746 N.W.2d 416.

B.

The Alpha and Omega: Public Policy

[36] Public policy, which the District Court casually jettisoned, decides this case. It is the beginning and the end.

[37] Even before the United States was a country, it was morally and socially understood that fathers were required to support their children. Other than to evolve into a legal duty, and to expand its reach to mothers, too, our society has never backed away from this understanding. All three branches of North Dakota's government agree.

[38] In North Dakota, a parent's legal duty to support his child was codified in territorial days (in 1877), and has extended down time's corridors, into its current statute, which says:

> Parents shall give their children support and education suitable to the child's circumstances.

N.D.C.C. § 14-09-08.

[39] Our Child Support Guidelines give structure to this duty, and speak directly of child support's policy underpinnings:

> ***Minimum Support Level.*** A support obligation should be established in each case where the obligor has any income. Even though the obligor's payment is far from sufficient to meet the child's needs, considerations of policy require that all parents understand the parental duty to support children to the extent of the parent's ability. Equally important ***considerations of policy*** require the fostering of relationships between parents and children which may arise out of the recognition of parental duty.

N.D.A.C. § 75-02-04.1-04 (emphasis added).

[40] This Court says, "[o]ur law and the public policy inherent in the guidelines dictate that children should share in the child support obligor's good fortune." Longtine v. Yeado, 1997 ND 166, ¶ 18, 567 N.W.2d 819.

[41] Turning the proposition inside out, it has also discussed how public policy regards shirkers:

> Public policy abhors allowing a parent to avoid the obligation to support a child...In an era when even a welfare parent with custody must work and earn minimum wages, the courts expect no less from a noncustodial parent.

Berg vs. Ullman, 1998 ND 74, ¶ 24, 576 N.W.2d. 218.

[42] Can there be doubt about the intensity powering our insistence that parents support their children? Not when one knows our legislature has made the nonpayment of support a crime...*of felony magnitude*:

> Every parent...legally responsible for the care or support of a child who...willfully fails to furnish food, shelter, clothing and medical attention reasonably necessary and sufficient to meet the child's needs is guilty of a class C felony.

N.D.C.C. § 14-07-15.

[43] Thus, the lawyer's sin of over-magnifying a point is hard, if not impossible, to commit when it comes to this proposition: Our law insists that parents financially support their children. Its insistence has been spoken by our legislature, through statutory enactment; by our judiciary, through this Court's decisions; and by our executive branch, through administrative guidelines.

C.

This Clear Policy Isn't Diminished When Support Actions Are Brought After the Child is Born

[44] According to the U.S. Center for Disease Control, for nearly the past decade, over 40% of the children born in the United States were born to unmarried mothers. Do those children have any less right to be supported by their fathers, from birth, than the other 60%? Again, our law says, "no." In fact, even when it takes a while for the legal process to catch up with a non-paying parent—paternity actions being perhaps the best, most persistent example—our law says, "pay up":

> A person legally responsible for the support of a child under the age of eighteen years ***who is not subject to any subsisting court order for the support of the child*** and who fails to provide support, subsistence, education or other necessary care for the children...***is liable*** for the reasonable value of the physical and custodial care or support which has been furnished to the child by any person...

N.D.C.C. § 14-08.1-01 (emphasis added).

"...is liable."

No qualification. No condition. "...is liable."

[45] Section 14-08.1-01, has been repeatedly construed to permit the imposition of support obligations ***before support proceedings or motions were commenced***. K.E.N. vs. Shasky, 513 N.W.2d. 892 (ND 1994)(Social Service Board permitted to sue a father for past-due child support nearly ***two years*** after mother had assigned it her support rights); Williams County Social Services Board vs. Falcon, 367 N.W.2d. 170 (ND 1985)(County awarded almost ***eight years*** of arrearages, under similar circumstances). Throndset v. L.L.S., 485 N.W.2d 775 (N.D. 1992)(Burleigh County Social Services Board obtained 17-month arrearage

from father); Richter vs. Houser, 1999 ND 147, 598 N.W.2d 193 (N.D. 1999)(County awarded $8,789 arrearage against father).

[46] When identifying an obligor's pre-action, pre-Order arrearage, this Court has endorsed using the presumptively correct amount generated by our Child Support Guidelines. Krug v. Carlson, 2000 ND 157, 615 N.W.2d 564. In Krug, dad argued mom wasn't entitled to a child support arrearage for lack of proof of over a year of expenses she'd incurred for their child. He claimed she needed to "present a detailed itemization of all expenses furnished for the child..." Id., ¶ 6. The District Court disagreed and, on appeal, was affirmed:

> We conclude the trial court did not err in considering the guideline amount when determining reasonable reimbursement under N.D.C.C. § 14-08.1-01.

Id., ¶ 10; See also, Hagel v. Hagel 2006 ND 181, 721 N.W.2d 1; Richter vs. Houser, 1999 ND 147, 598 N.W.2d 193.

[47] These decisions, of course, are consistent with our statutory law, which provides:

> There is a rebuttable presumption that the amount of child support that would result from the application of the child support guidelines is the correct amount of child support.

N.D.C.C. § 14-09-09.7(4).

D.

The District Court's Curious Error:
Invoking the Best Interests of the Child Standard

[48] Our law unqualifiedly says that parents shall financially support their children.

[49] The District Court in this case says something different. It says Ahmed was required to support AAD, ***only if it concluded such support was in AAD's "best interests."*** It shared this conclusion three times:

> THE COURT: *Well, the fact of the matter is, I think I have to look at* ***the best interests of the child*** *when I do a child support when it starts. And if there's some suggestion that Nadia can provide for this support, I think that is relevant toward when it starts. And by telling Ahmed she didn't need any support, that tells me she felt she didn't need any support. It's not the end of all things, but it certainly is a factor in the analysis.*

[T. 32-33]

> THE COURT: *I don't think there's any suggestion that he can't afford to do this. The question is whether it's fair to make him do it in the* ***best interests of the child****...*

[T. 86]

> The Court concludes that fairness and public policy, **as well as AAD's interests** would best be served if Ahmed's child support obligation began 30 days after that action was filed. In other words, in October of 2016.

[App. 102](emphasis added).

[50] *Though it never said so*, perhaps the District Court errantly leaned on this Court's outdated holdings that district courts had discretion to "limit past child support as the trial court deems just." Rydberg v. Johnson, 1998 ND 160, 583 N.W.2d 631; McDowell v. McDowell, 2003 ND 174, 670 N.W.2d 876.

[51] In those old decisions, this Court always attributed that discretion to North Dakota Century Code Section 14-17-14(4), which authorized such "limiting" in "appropriate circumstances." As we know, however, Chapter 14-17, our old Parentage Act, was repealed in 2005 and, with it, the old Section 14-17-14(4). That chapter was replaced with a new Uniform Parentage Act...which does ***not*** include a section granting court's discretion to "limit" past child support.

[52] Importantly, even when that limiting authority existed, it was largely exercised less to "limit" an obligor's back support than to "credit" him or her for support already given. Wilson v. Wilson, 2014 ND 199, 855 N.W.2d 105; Brandner v. Brandner, 2005 ND 111, 698 N.W.2d 259; Rydberg v. Johnson, 1998 ND 160, 583 N.W.2d 631.

[53] For example, there's Hagel v. Hagel, 2006 ND 181, 721 N.W.2d 1, a case bearing some resemblance to this one. There, the parties separated in May of 2001, and a divorce began in March of 2004. The District Court made a formal finding that, during the separation, the father had made "minimal effort to support the children." Id. ¶ 8. Nevertheless, without additional explanation, other than noting it possessed discretion, the District Court denied mother's claim for back support. Evidencing particular interest in the father's lack of support, this Court ***reversed***, saying:

> ***The facts recited by the court support an award of child support during the parties' separation.*** The only reason given by the court to deny the request is that it had "discretion" to set the date of the commencement of the child support obligation. A court's discretionary authority does not in itself establish that its decision is the product of a rational mental process leading to a reasoned decision.

Hagel, Id., at ¶ 9 (emphasis added).

[54] Or, again, *though it never said so*, perhaps the District Court errantly leaned on North Dakota Century Code, Section 14-20-57—regarding an "Order Adjudicating Parentage"—and which says:

> The order may contain any other provision in the best interests of the child, including payment of support...

N.D.C.C. § 14-20-57(4).

[55] The order in this case, however, was ***not*** an "order adjudicating parentage." Ahmed's parental relationship had been established long before the trial of this action. Remember, in the days after AAD's birth, he and Nadia signed an Acknowledgement of Paternity. That acknowledgement was filed with the State Department of Health, which issued AAD's birth certificate, and identified Ahmed as AAD's father [T. 6; App. 74].

[56] Under North Dakota's ***current*** Parentage Act, the effect of that Acknowledgement was to ***immediately*** repose in Ahmed "all of the rights...of a parent" ***and*** to impose upon him "all of the...duties of a parent." Amongst those duties was, and is, an ***unqualified*** duty to support his child:

> ...a valid acknowledgment of paternity filed with the state department of health is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent and ***must be recognized as a basis for a support order*** in any proceeding to establish, enforce, or modify a support order.

N.D.C.C. § 14-20-15(1)(emphasis added).

[57] The "best interests of the child" factors had no place in resolving the question this case presents. With a signed, filed Acknowledgement of Paternity, a duty to support his child had already been conferred and imposed upon Ahmed. The District Court erred by applying an inapplicable legal standard. Its job was to simply calculate Ahmed's back support. Any other "discretion" it retained was limited to giving Ahmed credit for any support he'd already paid; unfortunately, none.

[58] If this Court believes the "best interests of the child" factors *are* involved in this case, Nadia leaves to this Court resolution of these questions: (1) Did the District Court provide adequate—any?—findings of fact of how AAD's best

interests are served by the non-receipt of child support; and (2) How, and when, could *any* child's best interests be served by the non-receipt of child support?

E.

A Custodial Parent's Words Can't Waive the State's Policy Requiring Parents to Support Their Children

[59] The essence of Ahmed's defense against paying the child support (he says he so wanted to pay) is that Nadia waived it: Because of words she spoke or texted to him, his duty to pay support for his son disappeared.

[60] As his attorney explained:

> *The issue really comes down to the fact that we have a father here who has tried, who has made* ***an*** *attempt, who has made offerings, and who has been rejected and denied time and time after again* ***by the mother telling him I don't want your money.***

[T. 131](emphasis supplied).

[61] And the District Court bought it:

> Here, Nadia has a Ph.D. in plant genetics, and is employed in that field with DuPont Pioneer in Moorhead, Minnesota. No evidence was presented of her income. But there was evidence that when Ahmed attempted to give Nadia a $3,000 check shortly after AAD's birth, **she rejected that**, as well as Ahmed's other gestures of giving assistance. These actions by Nadia circumstantially prove that she had sufficient income to provide for AAD's needs. Therefore, there is not a strong public policy requiring Ahmed to retroactively pay child support from the time of AAD's birth.
>
> Both Nadia and Ahmed had told each other that Ahmed's child support should be legally imposed. The first time Nadia sought to impose a child support obligation on Ahmed was when she began the paternity action on September 12, 2006 [sic].
>
> The Court concludes that fairness and public policy, **as well as AAD's interests** would best be served if Ahmed's child support obligation began 30 days after that action was filed. In other words, in October of 2016.

[App. 102](emphasis added).

[62] This conclusion, however, ignores both clear statutory law and prior case holdings.

[63] Our legislature has said, plainly, that the duty to pay child support cannot be waived:

> An agreement purporting to relieve an obligor of any current or future duty of child support is void and may not be enforced...

N.D.C.C. § 14-09-09.32.

[64] This Court has noted that, though a custodial parent has a representational right to collect child support, "the right to support really belongs to the child." Sprynczynatyk v. Celley, 486 N.W.2d 230, 232 (N.D. 1992). And, with respect to that right:

> [w]e take a dim view of agreements purporting to sign away the rights of a child in support settings—not from a contractual background, but from a public policy one..."

Sullivan v. Quist, 506 N.W.2d 394 (N.D. 1993).

[65] Here, the "waiver" at hand was not so much an agreement or contract; it was even less than that. It was a few emailed words upon which an obligor quickly and gladly claims a right to rely. In either event, the theory can't be endorsed, at least not without disregarding applicable law and ignoring the public policy that underpins it.

F.

A Custodial Parent's Deeds Can't Waive the State's Policy Requiring Parents to Support Their Children

[66] It is unclear whether the Court accepted it, but Ahmed clearly attempted to convince it that Nadia had waited too long to bring this action, and that the wait

should reduce—or eliminate—his duty to pay past support. In her closing, Ahmed's attorney argued:

> *And what we really tried to have the Court understand...is that by ordering child support today—of that child support back to the time of AAD's birth, we would be setting a precedent that mother's or custodial parents can refuse and can choose when they would like to seek child support...[a]nd noncustodial parents should begin saving and having a savings account because maybe year one, maybe year three, maybe year five or ten, the custodial parent could come back and seek that of them. And I don't think that's a public policy that we want to be entering.*

[T. 131].

[67] This laches argument, however, is not a new one. It's been made to this Court before...and was rejected.

[68] In Williams County Social Services Board vs. Falcon, 367 N.W.2d. 170 (ND 1985), the County sued for and was awarded almost ***eight years*** of arrearages, under similar circumstances. Like Ahmed, Bobby Falcon claimed the action came too late—to which this Court replied:

> Our research has not revealed a case, nor has any been called to our attention, in which an alleged father has successfully raised laches as a defense to a paternity action. Our research has revealed several cases in which an alleged father did not prevail on a claim of laches in a paternity action. (citations omitted).

Williams, Id., at 175.

[69] Had our legislature intended to limit the duration of a non-custodial parent's retroactive child support, it could easily have done so. Other states have. See, Minn. Stat., § 257.66, subd. 4 (in paternity cases, Minnesota limits past support to two years before a proceeding is commenced).

G.

If a Custodial Parent Can't Waive Her Child's Right to Support, Evidence Offered to Prove That Proposition Is Irrelevant and Shouldn't be Received.

[70] During trial, Ahmed offered into evidence two email strings between Nadia and Ahmed. In one of them, on October 13, 2012—before AAD's birth—Nadia wrote:

> I don't need anything from you financially, and if something happens to my income or myself, I have a family who would be happy to help.

[App. 97].

[71] In another, dated November 12, 2015, Nadia wrote:

> I honestly don't want anything from you, not your money as I long as I can support AAD myself.

[App. 100].

[72] When her emails were offered into evidence, Nadia objected:

MR. GJESDAHL: I'll object here, Your Honor, on relevance. We have a statute that says you cannot waive child support and...

THE COURT: I know. I read your brief, but I am going to overrule the objection. The witness may answer.

[T. 30-35]

[73] Nadia's counsel asked, *"Judge, just for the...can you help me with the record, please? To what issue would this be relevant?"* [T. 32]. And that was the juncture where the Court responded:

> THE COURT: *Well, the fact of the matter is, I think I have to look at* ***the best interests of the child*** *when I do a child support when it starts. And if there's some suggestion that Nadia can provide for this support, I think that is relevant toward when it starts. And by telling Ahmed she didn't need any support, that tells me she felt she didn't need any support. It's not the end of all things, but it certainly is a factor in the analysis.*

[T. 32-33]

[74] The "if-then" argument here is quite simple. ***If*** the "best interests of the child" factors don't apply to this matter, and ***if*** a custodial parent cannot waive her child's right to receive support, ***then*** evidence offered on those issues is not relevant. It is simply not "of consequence in determining the action." N.D.R.E., Rule 401.

[75] Sure. This case involved a bench trial. And, when it comes to bench trials, this Court has said that the Rules of Evidence are relaxed.

> In Schuh v. Allery, 210 N.W.2d 96 (N.D. 1973), we stated that, in a nonjury case, a trial judge should ordinarily admit all evidence which is not clearly inadmissible because a trial judge who is competent to rule upon the admissibility of evidence can distinguish between admissible and inadmissible evidence when deliberating upon the ultimate decision. We cited, with approval, the following from Builders Steel Co. v. Commissioner of Internal Revenue, 179 F.2d 377, 379 (8th Cir. 1950):
>
> " 'In the trial of a nonjury case, it is virtually impossible for a trial judge to commit reversible error by receiving incompetent evidence, whether objected to or not. An appellate court will not reverse a judgment in a nonjury case because of the admission of incompetent evidence, unless all of the competent evidence is insufficient to support the judgment or unless it affirmatively appears that the incompetent evidence induced the court to make an essential finding which would not otherwise have been made....' " Schuh, supra, 210 N.W.2d at 100.

Brodersen v. Brodersen, 374 N.W.2d 76, pp. 78-79 (N.D. 1985).

[76] The Broderson "logic"—like a parent's "because I said so"—is apparently a one-step syllogism: Since a trial court is competent, its evidentiary rulings are competent.

[77] This presumed infallibility largely does away with the Rules of Evidence—whose purpose is the "ascertaining of truth and securing a just determination"—in bench trials. N.D.R.E. Rule 102. Doesn't it?

[78] What is the point of making an objection, of an offer of proof? Why do we even pretend we have rules that govern evidentiary matters in bench trials? What kind of show are we lawyers and judges putting on for our legal consumers? Who are we kidding?

[79] Be that as it may, here we have that case, the one where "all of the competent evidence is insufficient to support the judgment," the one where the error wasn't "harmless." Either that, or we have the one where the admission of incompetent evidence induced the Court to make essential findings it would otherwise not have made. Plainly, the District Court actually grounded its decision in the evidence to which Nadia objected and it errantly received.

[80] To discourage future courts from making the same mistake, and to spare future Nadias the thousands of dollars of fees she's incurred because of it, this Court should say it: The District Court made a mistake in receiving exhibits offered to prove a custodial parent waived her child's right to receive child support; the mistake was consequential, not harmless; the mistake supports reversal.

IV.

Conclusion

[81] It almost defies belief.

[82] Here we have a man who had a child. He knew the child was his before birth, and acknowledged the child as his at birth. He is a well-educated professional, with ample means to provide for his child. He admits to a moral and

legal obligation to support his child, from the child's birth. He has two other children upon whom his income is lavished, and professes a deep desire to do the same for his third.

[83] To those facts we have a mountain of law, from all three branches of government, that says, yes, let's let him do just that.

[84] It says when Ahmed acknowledged his paternity, his support duty was engaged; it was no longer a question of "discretion" or best interest analysis. N.D.C.C. § 14-20-15(1). It says, if Ahmed hasn't provided support for his child, he should reimburse the one who has. N.D.C.C. § 14-08.1-01.

[85] It says the right to child support is AAD's, not Nadia's, Sprynczynatyk v. Celley, 486 N.W.2d 230 (N.D. 1992), and that Nadia can't waive it. N.D.C.C. § 14-09-09.32.

[86] And, we have a District Court that ignored both law and fact and, instead, actually found it was in AAD's "best interests" to ***not*** receive child support for the first four-and-a-half years of his life.

[87] Again, it almost defies belief.

[88] How did the District Court err? Well, in terms of the questions presented:

1. It committed pure legal error, by applying an inapplicable "best interests" standard, and by concluding it had discretion to decide when Ahmed's support obligation began. By virtue of a signed, filed Acknowledgement of Paternity, our law dictates otherwise. N.D.C.C. Sections 14-20-15(1) and 14-08.1.01.

2. There was no word or deed, or combination thereof, by which Nadia could have waived, or laches could have defeated, AAD's right to receive financial support from his acknowledged father.

3. The District Court erred by receiving evidence on propositions bearing no consequence to this matter's outcome.

[89] So...what should this Court do?

[90] It should reverse the District Court's decision, and ***not*** with a remand; the necessary record is already made, by both conceded and stipulated facts. By conclusively established facts, we know:

1. When AAD was born;
2. Ahmed's gross income in each year of AAD's life;
3. The presumptively correct guideline child support amount in each year of AAD's life;
4. that Ahmed's prospective child support obligation began on April 1, 2017 [App. 51]; and
5. that Ahmed never paid that plug nickel of support from AAD'S birth through March 2017.

[91] From here, all that's involved is some basic math. Ahmed's unpaid child support is $77,865:

2012	2 months X $1,734/mo. [App. 76] =	$3,468
2013	12 months X $1,422/mo. [App. 77] =	$17,064
2014	12 months X $1,216/mo. [App. 78]=	$14,592
2015	12 months X $1,721/mo. [App. 79]=	$20,652
2016	12 months X $1,501/mo. [App. 80]=	$18,012
2017	3 months X $1,359/mo [App. 81]=	$4,077
Total arrears:		$77,865

[92] The District Court should be instructed to amend both the support and money judgments to reflect Ahmed's $77,865 arrearage.

[93] Respectfully submitted.

Dated: September 22, 2017.

Gjesdahl Law, P.C

Michael L. Gjesdahl (ND ID No 04658)
Insight Professional Offices
1375 21st Avenue N., Suite A
Fargo, ND 58102
(701)-237-3009
(701)-239-1724 (fax)
Mike@Gjesdahllaw.com
Attorney for Plaintiff

IN THE NORTH DAKOTA SUPREME COURT

Nadia Nikolayevna Krasheninnik,	)	
	)	
Plaintiff and Appellant,	)	Supreme Court #20170304
	)	
	)	Cass County #2017-DM-00467
vs.	)	
	)	
	)	**Affidavit of Service**
Ahmed Moustafa Dokmak,	)	
	)	
Defendant and Appellee.	)	

I, Tiffany Plutowski, swear that I am at least 18 years of age, not a party to or interested in the above action, and that on the 22nd day of September 2017, I served a copy of the following document(s):

1. ***Appellant's Brief; and***
2. ***Appellant's Appendix.***

By placing a true and correct copy of the above document(s) in an envelope addressed as follows:

Ms. Sharon Lo, Esq.
Circling Eagle Law
3523 45th St. S., Ste. 100
Fargo, ND 58104
Email: slo@circlingeaglelaw.com

I further state that a true and correct copy of the **Appellant's Brief** was emailed to Ms. Sharon Lo. To the best of my knowledge, the email address given above is the actual email address of the party intended to be so served.

Dated this 22nd day of September 2017.

Tiffany Plutowski

Subscribed and sworn to before me this 22nd day of September 2017 in Cass County, State of North Dakota.

Notary Public

GILLIAN SENGER
Notary Public
State of North Dakota
My Commission Expires Jan. 5, 2023

IN THE NORTH DAKOTA SUPREME COURT

Nadia Nikolayevna Krasheninnik, Plaintiff and Appellant, vs. Ahmed Moustafa Dokmak, Defendant and Appellee.	)	Supreme Court #20170304 Cass County #2017-DM-00467 **Affidavit of Service**

I, Tiffany Plutowski, swear that I am at least 18 years of age, not a party to or interested in the above action, and that on the 28th day of September 2017, I served a copy of the following document(s):

1. ***(corrected) Table of Contents; and***
2. ***(corrected) Table of Authorities.***

By placing a true and correct copy of the above document(s) in an envelope addressed as follows:

Ms. Sharon Lo, Esq.
Circling Eagle Law
3523 45th St. S., Ste. 100
Fargo, ND 58104
Email: slo@circlingeaglelaw.com

I further state that a true and correct copy of the **(corrected) Table of Contents and Table of Authorities** was emailed to Ms. Sharon Lo. To the best of my knowledge, the email address given above is the actual email address of the party intended to be so served.

Dated this 28th day of September 2017.

Tiffany Plutowski

Subscribed and sworn to before me this 28th day of September 2017 in Cass County, State of North Dakota.

Notary Public

GILLIAN SENGER
Notary Public
State of North Dakota
My Commission Expires Jan. 5, 2023